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May 27, 1997

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MAY 27 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

93-253

Re: ET Docket 95-183
DCT Communications, Inc.
Comments in Support of Petition for Reconsideration

Dear Mr. Caton:

Transmitted herewith are an original and eleven copies of DCT Communications, Inc.'s Comments in the above-referenced proceeding. DCT supports the Petition for Reconsideration filed by BizTel, Inc. on April 1, 1997.

Please date-stamp the enclosed "S&R" version of this pleading and return it to the courier delivering this package. If you have any questions concerning this filing, please call me.

Sincerely,

Russ Taylor

Russ Taylor

Enclosures

RECEIVED

MAY 27 1997

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

**Federal Communications Commission
Office of Secretary**

In the Matter of

**Amendment of the Commission's
Rules Regarding the 37.0-38.6
GHz and 38.6-40.0 GHz Bands**

ET Docket No. 95-183

**Implementation of Section 309(j)
of the Communications Act --
Competitive Bidding, 37.0-38.6
GHz and 38.6-40.0 GHz**

PP Docket No. 93-253

Directed To: The Commission

**COMMENTS OF DCT COMMUNICATIONS, INC.
IN SUPPORT OF PETITION FOR RECONSIDERATION OF BIZTEL, INC.**

DCT COMMUNICATIONS, INC. ("DCT"), by its counsel, respectfully submits these brief comments in support of the "Petition for Reconsideration of BizTel, Inc." filed on April 1, 1997, in the above-captioned proceeding.¹ DCT understands that the Commission's Rules do not directly provide for the submission of comments supportive of petitions for reconsideration filed in notice and comment rule making proceedings. However, it has been the Commission's practice in the past to consider such supportive comments where relevant. 47 C.F.R. § 1.425 (1996). Therefore, it is in the public interest to consider DCT's comments.

¹ Public Notice of BizTel's Petition appeared at 62 Fed. Reg. 25617 (May 9, 1997).

I. FURTHER AMENDMENTS SHOULD BE PROCESSED

DCT strongly agrees with BizTel's argument that the Commission must abide by Section 309(j)(6)(E) of the Communications Act, which sets forth the "obligation ... to use ... negotiation, ... and other means in order to avoid mutual exclusivity in application and licensing proceedings." 47 U.S.C. § 309(j)(6)(E) (1996). If the Commission ultimately decides to transition to an allocation system based on competitive bidding, it must concurrently permit mutually exclusive applicants an opportunity to submit amendments which eliminate that mutual exclusivity. BizTel accurately states that there is no rational distinction between those pending applications that were amended on or before December 14, 1995, and those pending applications that remain mutually exclusive.

DCT supports BizTel's claim that processing amendments that eliminate mutual exclusivity would not burden the Commission's resources. The Commission's claim that processing such applications would constitute a burden on its resources is not supported by any tangible evidence. In fact, as BizTel pointed out, the vast majority of these amendments seek to eliminate mutual exclusivity. In any event, as DCT and others suggested in earlier filings in this proceeding, the Commission's statutory obligation to take regulatory steps to avoid mutually exclusivity requires that these amendments be processed, whether a burden or not.

II. PENDING APPLICATIONS SHOULD BE CONSIDERED CUT-OFF

The Commission should declare that all pending 38 GHz applications are "cut-off" from competing applications. BizTel notes that Commission is misusing its cut-off rules to declare an entire group of applications "unripe" for processing. If the Commission decides to

transition to an allocation system based on competitive bidding, it will likely attempt to dismiss these applications as “unripe” or “mutually exclusive.” This action would be unfair and unlawful. First, as BizTel suggested in its Petition, the Commission would be creating mutual exclusivity solely for the purpose of increasing the amount of spectrum available for auction.

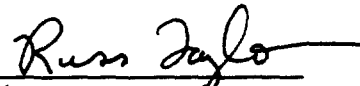
Additionally, the Commission’s action treating the applications as “unripe” would be illogically denying the very essence of what the freeze – and its ultimately adopted rules – set out to accomplish, namely a wholesale change in 38 GHz licensing procedures. To suggest that some unnamed entities possibly still retain the legal right to file competing applications, while at the same time denying pending applicants the right to file simple minor amendments is not reasoned decisionmaking. Either the prior licensing scheme is alive or dead; the Commission cannot logically have it both ways. If the Commission considers the prior licensing scheme alive for purposes of its cut-off rules, it should consider it alive for the purpose of perfecting (by amendment) those applications potentially subject to competing applications.

III. CONCLUSION

The 38 GHz service has been frozen for approximately 18 months. During this time, DCT, BizTel and other pending applicants and licensees have consistently urged the Commission to treat pending applicants with the fairness required by the Communications Act and its Rules. While the Commission certainly retains the discretion to transition the 38 GHz service to an allocation system based on competitive bidding, it must not do so by unlawfully harming those applicants who complied with the Rules in effect at that time. For these reasons, DCT respectfully urges the Commission to grant BizTel's Petition.

Respectfully submitted,

DCT COMMUNICATIONS, INC.

By: 
Thomas J. Dougherty, Jr.
Russ Taylor
Its Counsel

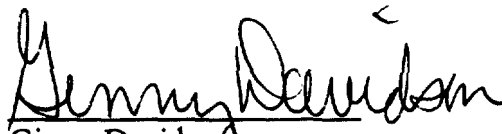
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May 27, 1997

CERTIFICATE OF SERVICE

I, Ginny Davidson, a secretary in the law firm of Gardner, Carton & Douglas, certify that I have this 27th day of May, 1997, caused to be sent by first-class U.S. mail, postage-prepaid, a copy of the foregoing Comments to the following:

Walter H. Sonnenfeldt, Esq.
Walter Sonnenfeldt & Associates
4904 Ertter Drive
Rockville, Maryland 20852


Ginny Davidson